

# **Conduct Guidelines and Grievance Procedures for Students 2011-2012**

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Policy: MSU Conduct Guidelines and Grievance Procedures for Students

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Complied by: Dean of Students Office, SUB Room 174, (406) 994-2826

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## **MSU Student Conduct Code 2011-2012**

Introduction and Purpose:

The Dean of Students Office reviews the MSU Conduct Code and Grievance Procedures for Students annually. As changes occur in the organizational, operational, educational, and legal environments, the guide is revised.

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**Sections 100 – 530 remain the same**

**600.00 Student Conduct Code**

**610.00 CONDUCT EXPECTATIONS**

Montana State University expects all students to conduct themselves as honest, responsible and law-abiding members of the academic community and to respect the rights of other students, members of the faculty and staff and the public to use, enjoy and participate in the University programs and facilities. Student conduct that disrupts, invades or violates the personal and property rights of others is prohibited and may be subject to disciplinary action.

**620.00 JUDICIAL AUTHORITY AND JURISDICTION**

A. Conduct violations which occur on University-owned or University-controlled property or at University-sponsored events are subject to University disciplinary jurisdiction. The University may also apply this code to student conduct, regardless of where it occurs, which adversely impacts or affects the overall mission, programs, and functions of the University or the health and safety of members of the University community.

B. Students who commit offenses against the laws of the city, state or United States are subject to prosecution by those authorities and may be subject to disciplinary action under this code if the offenses are also violations of this code. University disciplinary proceedings may precede, follow, or take place simultaneously with criminal proceedings and will not be subject to challenge on the ground that criminal charges involving the same incident have been dismissed or reduced. When a student has been charged by a civil authority for a violation of law, the

University will neither request nor agree to special consideration for the student solely because of his or her status as a student.

### 630.00 PROSCRIBED CONDUCT

631.00 Any student found to have committed a violation of the student conduct code is subject to disciplinary sanctions outlined in Section 660.00. The following offenses constitute violations of the student conduct code and can lead to serious disciplinary action, including suspension or expulsion from the University.

### 632.00 ACTS OF DISHONESTY

Acts of dishonesty include but are not limited to:

A. Cheating, plagiarism or other breaches of academic integrity, such as fabrication, facilitating or aiding academic dishonesty; theft, unauthorized possession or use of instructional materials or tests; unauthorized access to or manipulation of laboratory equipment or experiments; alteration of grades or files; misuse of research data in reporting results; use of personal relationships to gain grades or favors, or otherwise attempting to obtain grades or credit through fraudulent means. (Refer to Academic Misconduct Procedures, 420.00 for additional definitions)

B. Knowingly furnishing false information to any University official, faculty member or office.

C. Forgery, alteration or misuse of University documents, records, instruments of identification, computer programs or accounts.

### 633.00 STALKING, HARASSMENT AND HAZING

A. Stalking includes, but is not limited to, purposely or knowingly causing another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly following the stalked person or harassing, threatening, or intimidating the stalked person, in person or by mail, by electronic communication or any other action, device, or method.

B. Harassment includes but is not limited to verbal, graphic and/or written abuse directed at another, beyond a reasonable expression of opinion, which:

1. is threatening or carries with it the intention to do bodily harm, or
2. substantially interferes with a person's exercise of his/her responsibilities as a student, faculty or staff member.

C. Hazing includes but is not limited to any conduct or method of initiation, admission or condition of continued membership in any student organization which:

1. endangers the physical or mental health or safety of any student or other person, including extended deprivation of sleep or rest; forced consumption of food, liquor, beverage, or drugs; beating or branding; involuntary confinement or imprisonment, or

2. destroys, vandalizes or removes public or private property

#### 634.00 ASSAULT AND SEXUAL OFFENSES

A. Physical assault, which includes but is not limited to: physical contact of an insulting or provoking nature or physical interference with a person which prevents the person from conducting his/her customary or usual affairs, puts the person in fear for his/her physical safety, or causes the person to suffer actual physical injury.

B. Acts of sexual violence, such as sSexual intercourse without consent, sexual assault, sexual coercion, sexual harassment or any other nonconsensual conduct of a sexual nature.

#### 635.00 ALCOHOL AND DRUG OFFENSES

A. Use, possession, manufacture, distribution or sale of narcotics or dangerous drugs, except as expressly permitted by law or University policy.

B. Use, possession or distribution of intoxicants, including alcohol, in the buildings or on the grounds of Montana State University except as expressly permitted by law or University policy.

#### 636.00 FIREARMS, EXPLOSIVES AND WEAPONS OFFENSES

Illegal or unauthorized possession or use of firearms, explosives, weapons or dangerous chemicals on University premises, including:

A. carrying a concealed weapon and/or firearm;

B. discharging firearms on campus;

C. possessing firearms or ammunition on campus except as expressly authorized by residence hall and family student housing policies;

D. possessing dangerous chemicals on campus, except as authorized by law and s University policy.

#### 637.00 ILLEGAL AND DISRUPTIVE CONDUCT

A. Violation of federal, state or local law on University premises or at University sponsored activities; violation of published University policies, rules or regulations.

B. Acting to impair, interfere with or obstruct the orderly conduct, processes and functions of the University, including but not limited to:

1. Violence or threat of violence against self or any member or guest of the University community.
2. Interference with the freedom of movement of any member or guest of the University.

3. Interference with the rights of others to enter, use or leave any University facility, service or activity.
4. Obstruction or disruption of teaching, learning, research, administration, disciplinary procedures or other University activities, or of other authorized activities on University premises.
5. Use of public address systems on the campus outside of University buildings except with written permission of the Office of Student Activities.
6. Failure to comply with directions of law enforcement officers and University officials acting in the performance of their duties and/or failure to identify oneself to those persons when requested.
7. Failure to comply with any authorized Student Conduct Code sanction(s)/condition(s).
8. Trespassing or unauthorized entry into University buildings or property.

#### 638.00 THEFT/MISUSE OF PROPERTY

A. Theft, attempted theft, unauthorized possession, use, or removal of University property or the property of any member of the University community.

B. Defacing, tampering, damaging or destroying University property or the property of any member of the University community.

C. Unauthorized presence in or use of University grounds, facilities, or property.

D. Theft or other abuse of computer facilities, capabilities and/or computer time, including but not limited to:

1. Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.
2. Unauthorized transfer of a file.
3. Unauthorized use of another individual's identification or password.
4. Use of computing facilities to interfere with the work of another student, faculty member or University official.
5. Use of computing facilities to send harassing or abusive messages.
6. Use of computing facilities to interfere with the normal operation of the computing system.
7. Unauthorized use of computer resources, or the unauthorized use or copying of computer data or software. Examples of unauthorized use or copying include: attempts to alter systems, unauthorized access or copying of data or software, attempts to release data, text, files or software in violation of copyright protection and the condoning, approving, or directing of unauthorized use or copying.
8. Unlawful downloading and distribution of copyrighted digital media via peer-to-peer (P2P) file sharing applications including, but not limited to video (movies) and sound (music) files.
9. Attempts to circumvent or defeat any University owned system firewall or any other mechanism put in place to manage the network.

E. Theft of telephone services or other auxiliary services, including food services, housing, parking, etc.

#### 640.00 JUDICIAL SYSTEM/HEARING BOARDS

The University shall establish appropriate procedures to conduct hearings concerning alleged violations of the Student Conduct Code. There are two primary judicial systems at Montana State University.

#### 641.00 RESIDENCE LIFE JUDICIAL SYSTEM

The procedures for the conduct of the Residence Life Judicial System are available from Residence Life. The system is designed to impose disciplinary action on residents of the Residence Halls who violate residence hall rules and/or the Student Conduct Code. The Director of Residence Life will coordinate the Residence Life Judicial System and will work closely with the Dean of Students to assure that students charged with conduct violations who reside in the residence halls are referred to the appropriate hearing board or administrative hearing process. When the actions of the student accused of a conduct violation adversely impact the campus community as a whole, the student will be referred to the Dean of Students. Such a referral may in addition to or in lieu of the Residence Life Judicial System.

#### 642.00 UNIVERSITY STUDENT CONDUCT BOARD

The University Student Conduct Board is the judicial system for the adjudication of cases involving alleged violations of the Student Conduct Code. The Board will determine whether the student charged has violated the Student Conduct Code and recommend findings and sanctions to the Vice President for Student Success or designee. The procedures for such hearings are set forth in Section 650.00.

#### 643.00 COMPOSITION OF UNIVERSITY STUDENT CONDUCT BOARD

A. The University Student Conduct Board is a standing committee. The presiding officer shall be designated by the Vice President for Student Success. Other members will be:

1. One professional staff member selected by the Dean of Students Office after consultation with the Professional Council
2. Two faculty members selected by the Dean of Students Office after consultation with the Chair of Faculty Council; and
3. Two student members selected by the Dean of Students Office after consultation with the President of ASMSU.

B. A non-voting recording secretary will be provided by the Dean of Students Office to take minutes.

C. The presiding officer of the University Student Conduct Board will select replacements for any board members for good cause.

D. A quorum is considered to be four members, one of which must be a student.

#### 644.00 COMPLIANCE WITH TITLE IX DURING ALLEGATIONS OF VIOLATIONS OF THE STUDENT CODE OF CONDUCT

A. Students at Montana State University have the right to live and learn in an academic environment that is free from all forms of sexual violence and misconduct. When allegations of sexual violence or misconduct are brought to the Dean of Students office, and a respondent is found to have violated the Code of Conduct, serious sanctions will be issued to help ensure that such actions are never repeated.

B. All processes involved with adjudicating alleged violations of the Code of Conduct shall help to facilitate an academic and living environment that is free of sexual violence and misconduct while complying with the provisions outlined in the Title IX of the Education Amendments of 1972.

C. Montana State University has designated the Director of Human Resources and Affirmative Action as a Title IX Coordinator for matters related to sexual violence and misconduct and to coordinate efforts to comply with Title IX. The Dean of Students, after consultation with the Title IX Coordinator, may appoint an Assistant Title IX Coordinator to conduct investigations of allegations of student code of conduct violations that involve sexual violence and misconduct.

#### 650.00 STUDENT CONDUCT HEARING PROCEDURES

#### 651.00 FILING OF CHARGES

On its own initiative or at the request of any student, faculty or staff member, the University, through the Dean of Students Office, may file appropriate charges of misconduct against a student.

A. Charges should be filed no later than four months after the alleged violation of the Student Conduct Code, unless good cause is shown to justify the delay. In no event should charges be filed more than one year from the date of the misconduct or the determination of the identity of the person believed to have violated the Student Conduct Code. When charges are referred to the University Student Conduct Board for adjudication the hearing will normally be convened within sixty (60) days from the date the charges were filed, unless good cause can be shown for delay.

B. All charges will be in writing and contain at least the following information:

1. the name and address (if known) of the student alleged to have violated the Student Conduct Code.
2. the date (s) the incident (s) occurred;
3. the location where the incident (s) occurred;

4. a description of the incident which sets forth sufficient details to establish a possible violation of the Student Conduct Code.

C. If a student has withdrawn or withdraws from the University after charges have been filed, the University may:

1. place a hold on the student's academic record and notify the student that disciplinary action will be initiated before the student's re-enrollment in the University, or
2. proceed with the disciplinary process, determining sanctions to be imposed if the student is readmitted.

D. The Dean of Students may order that university administrative services such as grades, registration, course drop/adds, fee payment, refunds, withdrawals, fee waivers, etc., be withheld to compel students accused of violation(s) of the Student Conduct Code to meet with the Dean of Students as necessary to properly investigate the alleged violation(s). Services may be withheld at the Dean of Students' discretion. Unless otherwise ordered by the Dean of Students, when charges are referred for adjudication in a Student Conduct Hearing all services will be withheld pending the outcome of the Hearing and any resulting sanctions and appeals.

#### 652.00 PRE-HEARING PROCEDURES

Upon filing charges, the University may conduct a pre-hearing conference (informal meeting) with the charged student(s) to discuss the nature of and responsibility for an alleged offense. In complaints of sexual harassment and sexual violence, separate pre-hearing conferences will be conducted with the charged student(s) and the complainant prior to referral to a judicial hearing. Upon receiving a complaint of sexual harassment or sexual violence, the Dean of Students office should encourage the complainant to seek additional support services, including the University Policy, Counseling & Psychological Services, and the VOICE Center.

A. The University shall notify the charged student(s) at least three calendar days prior to the scheduled pre-hearing. The student(s) shall have the right to waive the pre-hearing and proceed to a hearing before the Student Conduct Board.

B. The University staff member conducting the pre-hearing may withdraw any charge determined to be without basis. The person who filed the charge initially may appeal this decision to the Vice President for Student Affairs under the appeal processes set forth in Section 670.00.

C. After the conclusion of the Pre-Hearing conference, an Administrative Agreement can be proposed between the staff member in the Dean of Students and the charged student(s) if the facts and any sanction(s) which may be imposed can be agreed upon. The Administrative Agreement will be prepared and signed by both the student and the staff member in the Dean of Students office. By signing the Administrative Agreement, the student waives the right to a hearing and any appeal and agrees to accept the sanction(s). In allegations of sexual harassment and sexual violence, mediation between the charged student(s) and the complainant is not used. However, if pre-hearing conferences occur during sexual harassment or sexual violence

allegations, separate pre-hearing conferences shall be conducted with the charged student(s) and the complainant prior to referral to a judicial hearing.

D. If an Administrative Agreement is not signed within five working days following the pre-hearing conference, the matter shall be referred to the University Student Conduct Board, unless the charged student(s) can show good cause for the extension of the deadline. The responsibility and burden of proof of "good cause" will be upon the charged student(s). The parameters of "good cause" will be circumstances that were beyond the charged student's control (e.g., illness, death in the family).

E. In matters involving charges of sexual harassment or sexual violence, both the charged student(s) and the complainant will be notified in writing about the outcome of the complaint.

#### 653.00 DELAYS

Any student charged with violating the Student Conduct Code may request a reasonable delay of the pre-hearing or hearing for good cause.

#### 654.00 NOTICE

In the event of a hearing, the charged student shall be notified at least seven calendar days prior to the date of the hearing (except a hearing on the alleged violation of Interim Restrictions imposed under Section VIII. may be called with one day notice to the student). Such notice shall be in writing and shall include the following:

- A. The specific charge(s) citing the University policies or regulation(s) allegedly violated.
- B. A description of the alleged violation(s), including the time and place of the alleged act(s) (insofar as may reasonably be known) and a summary of the information upon which the charges are based.
- C. The time and place of the hearing.
- D. The procedures to be followed in the hearing.

#### 655.00 HEARING PROCEDURES

Hearings conducted by the Student Conduct Board shall be conducted according to the following guidelines:

- A. The member(s) of the board shall be impartial, i.e., without personal bias in favor of or against the charged student.
- B. The presiding officer of the hearing board will determine whether the hearing will be an "open meeting" under the MSU Open Meeting Policy. Generally, because of the privacy interests of the parties involved, these hearings are closed to the public.

C. Minutes will be kept by the recording secretary and an audiotape may be used to record the hearing. The audiotape is the property of the University.

D. The University shall bear the burden of proving by a preponderance of the evidence that the charged student violated the Student Conduct Code. A preponderance of evidence is described as evidence that is of greater weight or is more convincing than the evidence which is offered in opposition to it. A staff member of the Dean of Students Office will present the case to the University Student Conduct Board. In all cases, the person presenting the case shall not vote.

E. The University will proceed with a hearing in any case in which the charged student fails to appear after receiving proper notice. Proper notice is defined as one letter to the student's last known address.

F. The charged student has the right to be assisted by any advisor he/she chooses, at his/her own expense. The student is responsible for presenting his/her own case and, therefore, advisors are not permitted to speak or participate directly in any hearing

G. The complainant and the charged student(s) shall have the opportunity to review all written evidence prior to the hearing, to present witnesses and evidence at the hearing, and to question each other's evidence and witnesses during the hearing.

1. In hearings involving charges of sexual harassment or sexual violence, the Chair shall not allow the charged student to review the complainant's statement without also allowing the complainant to review the charged student's statement, if one is provided.

2. In hearings involving charges of sexual harassment or sexual violence, parties and their advisors are not allowed to directly question or cross-examine each other during the hearing. Any such questioning shall be facilitated by the Chair.

3. In hearings involving charges of sexual harassment or sexual violence, the Chair shall allow both the charged student and the complainant to present character witnesses. Character witnesses are limited to one per charged student and respondent respectively.

~~3.4.~~ In hearings involving charges of sexual harassment or sexual violence, the Chair may take any administrative steps necessary before, during, or after a hearing in order to protect the safety or wellbeing of the complainant.

H. The presiding officer may preclude the presentation of duplicative, irrelevant or unnecessary evidence and may limit the number of witnesses.

I. The presiding officer of the board shall control the hearing, and shall make all decisions regarding evidentiary and procedural questions.

J. Every reasonable effort will be made to elicit and consider the most reliable evidence. The statutory Rules of Evidence which govern the state and federal court proceedings do not apply.

Respondent and complainant must submit all evidence to the presiding officer no later than three working days before the hearing date for the presiding officer's review to determine admissibility. Evidence not submitted to the presiding officer three days before the hearing date will not be allowed at the hearing unless there is good cause for exception, as determined by the chair. All parties will have opportunity to review such evidence prior to the hearing. The decision of the presiding officer on the admissibility of the evidence and procedural matters is final.

K. Any person, including the charged student, who disrupts a hearing or who fails to adhere to the rulings of the presiding officer may be excluded from the proceedings.

L. The hearing board's determination shall be made on the basis of whether it has been proven by a preponderance of evidence that the charged student violated the code. Any decision of a hearing board shall be based only upon evidence and testimony presented at the hearing.

M. The decision of the hearing body and the recommended sanctions shall be in writing. If the charged student is found to have violated the code, the hearing body shall recommend sanction(s).

N. The record of the hearing shall consist of written minutes of the hearing, any documentary evidence presented, the audiotape, if made, and the written decision of the hearing board.

O. The entire record shall be forwarded to the designated University official responsible for imposing sanctions, as follows:

1. Residence Life Judicial System -- a staff person of Residence Life designated by the Vice President for Student Success;
2. University Student Conduct Board -- the Vice President for Student Success or designee.

P. The designated University official shall, within five working days after receiving the hearing board's decision and recommendation, determine what sanction (s), if any, will be imposed. The official shall send a copy of the decision and the sanction to be imposed to the charged student (s) and complainant.

Q. The decision of the Student Conduct Board and the sanctions imposed by the designated official may be appealed to the Vice President for Student Success as set forth in part 670.00.

## 660.00 SANCTIONS

A. Individual Sanctions: In recommending or determining a sanction, a hearing board or designated University official, respectively, may consider the student's present and past disciplinary record, including Residence Hall disciplinary record, the nature of the offense, the severity of any damage, injury, or harm resulting there from, and other factors relevant to the case. If the student is found to have violated the Student Conduct Code, the responsible University official may impose one or more of the following sanctions:

1. Expulsion -- Permanent separation of the student from the University. The student may also be barred from University premises.
2. Suspension -- Separation of the student from the University for a specified period of time, but not less than the remainder of the semester. The student shall not participate in any University sponsored activity and may be barred from University premises.
3. Conduct Probation/Suspension Warning -- A status which is imposed for a designated period of time and includes the probability of more severe disciplinary sanctions, including suspension or expulsion, if the student is found to have violated the Student Conduct Code during the period.
4. Disciplinary Reprimand -- A written reprimand for violation of the Student Conduct Code and a warning that further misconduct may result in more severe disciplinary action.
5. Restitution -- Compensation for actual loss, damage or injury. This may take the form of appropriate service and/or monetary or material replacement.
6. Residence Hall Sanctions -- Disciplinary action for violations in the residence halls may consist of, but is not limited to a Warning, Residence Hall Probation, Restrictions of Residence Hall Privileges, Restitution, Constructive Work Projects, Removal from Floor, Hall, or Residence Hall System, Persona Non Grata, Referral, or a combination of sanctions.
7. Other Sanctions -- Other sanctions may be imposed instead of or in addition to these specified above, such as work requirements, restrictions, loss of privileges, withholding registration, limitation of access to University housing facilities or other property, imposition of mandatory educational or counseling requirements or other sanction appropriate under the circumstances.

B. Group Sanctions: The following sanctions may be imposed upon sororities, fraternities and groups or organizations registered with the University:

1. Those sanctions listed in subparagraphs 3, 4, 5 and 7 of section 660.00 A. above.
2. Deactivation - Loss of all privileges, including University recognition or registration for a specified period of time.

#### 670.00 APPEALS

A. The appeal procedures for the Residence Life Judicial System are set forth in the Residence Hall Handbook.

B. The charged student may appeal the decision of the University ~~official~~ Student Conduct Board following a student conduct hearing by delivering a letter of appeal to the Vice President for Student Success within five (5) working days of the student's receipt of the official's decision.

C. In hearings involving charges of sexual harassment or sexual violence, the Vice President for Student Success must consult with the Title IX Coordinator before making a decision regarding an appeal.

D. In hearings involving charges of sexual harassment or sexual violence, both the charged student and the complainant may appeal the decision of the University Student Conduct Board.

The letter of appeal shall specifically allege and factually support one or more of the following grounds:

1. The student's rights as set forth in this procedure were violated (i.e., there was an error in the procedure or the interpretation of the Student Conduct Code which substantially affected the student's ability to receive a fair hearing);
2. The student has discovered new evidence, not previously available, which would have materially affected the decision; or
3. The sanctions imposed are not appropriate given the nature of the violation.

C. If a sufficient claim is presented under one or more of the specified grounds, the Vice President for Student Success shall request a copy of the record of the hearing. Within fourteen (14) calendar days from receipt of the record, the Vice President for Student Success shall review the entire record and render a written decision. The Vice President for Student Success may remand the case to the hearing board for further findings of fact or clarification. The decision of the Vice President for Student Success shall be based on the record only and is the final decision of the University. A copy of the decision shall be sent to the charged student, the complainant and included in the record, which shall be returned to the Dean of Students Office. Grades will be withheld until the appeal has been decided.

#### 680.00 INTERIM RESTRICTIONS

A. The University President or the Vice President for Student Success or their designee may impose interim residence hall restrictions or University suspension or other restriction (s) upon a student pending the resolution of disciplinary proceedings if there is reason to believe that the student's conduct poses an imminent and substantial threat of injury to or interference with persons or property.

B. Interim restrictions may include, but are not limited to, the following:

1. Residence hall and/or University suspension
2. Assignment to alternate housing for students residing in University housing
3. Limitation of access to University housing facilities, other campus facilities or University property in general
4. Restriction of communication with named individuals or groups within the University community
5. The requirement to secure advance authorization to engage in a specified activity and/or professional evaluation, intervention and/or treatment

C. The official imposing the interim restrictions shall notify the student in writing of the restrictions imposed and shall schedule a meeting with the student to be held within two working days after the imposition of the interim restrictions. If the student is unable to attend for good cause, the meeting or the hearing before the Student Conduct Board will be held as soon as the student is able to attend.

1. At the meeting the student shall be informed of the basis of the allegations that led to the imposition of the Interim Restrictions and shall be offered the opportunity to explain his position regarding the charges and the imposition of the Interim Restrictions. If, after hearing the student's position, the official believes the imposition of the Interim Restrictions was made in error or is too restrictive, he/she may rescind or modify the restrictions. Otherwise, the restrictions shall continue until the decision is rendered in the disciplinary proceedings.

2. In cases where interim restrictions have been imposed, the hearing shall be held as soon as possible, but not later than 30 days from the date of the imposition of interim restrictions.

3. The time limitations set forth in this section may be expanded upon the consent of the student.

#### 690.00 RECORDS AND CONFIDENTIALITY

A. The Dean of Students Office shall maintain disciplinary records, which shall include, but not be limited to, the student's name and related identifying information, applicable Student Conduct Code section (s), parties involved, description of the incident, sanction (s), expiration dates, agreements or restrictions, and any other data deemed relevant. Disciplinary records and related information shall be made available to hearing boards to assist in recommendation of an appropriate sanction, and to other University personnel who require such information to fulfill their official duties.

B. Students may arrange to review their own disciplinary records and related information by contacting the Dean of Students Office.

C. Except as provided elsewhere in this Code and/or as required by law, the University shall not communicate a student's disciplinary record to any person or agency without the prior written consent of the student ~~or, when the student is a minor, the student's parents or legal guardian.~~

D. Disciplinary records shall be maintained for seven (7) years from the last recorded entry, then destroyed.